

December 6, 2007

Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 1-A625  
Washington, DC 20554

RE: Joint Petition for Study Area Waiver per Part 36, Appendix-Glossary of the Commission's Rules

Dear Sir or Madam:

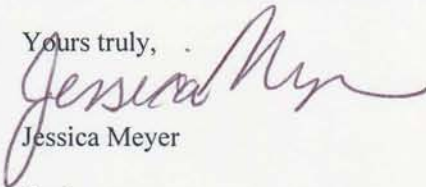
On behalf of our client, Hershey Cooperative Telephone Company ("Hershey"), and also on behalf of Qwest Corporation ("Qwest"), we submit for filing a Joint Petition for Study Area Waiver. Hershey and Qwest are both Nebraska incumbent local exchange carriers serving adjacent exchanges that mutually agreed to an exchange boundary modification to accommodate end-user customers moving into an area without telecommunications facilities. The proposed boundary modifications were subsequently approved by the Nebraska Public Service Commission.

Also included in this submission are the Nebraska Public Serviced Commission Order, the modified boundary exchange map, and the legal description of the boundary modification.

In accordance with Part 61.20(b)(1) of the FCC's rules, the original of this cover letter, FCC Form 159, and a check in the amount of \$7,365.00 are being sent via overnight delivery to the Mellon Bank in Pittsburgh, Pennsylvania.

Questions on the filing may be directed to me at 402.398.0062.

Yours truly,



Jessica Meyer

Enclosures

cc: Rex Woolley, Hershey Cooperative Telephone Company

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|  |   |                     |
|--|---|---------------------|
| In the Matter of                               | ) |                     |
|  | ) |                     |
| Hershey Cooperative Telephone Company          | ) | CC Docket No. 96-45 |
|  | ) |                     |
| and  | ) |                     |
|  | ) |                     |
| Qwest Corporation                              | ) |                     |
|  | ) |                     |
| Joint Petition for Waiver of the Definition of | ) |                     |
| "Study Area" as Contained in the Appendix-     | ) |                     |
| Glossary of Part 36 of the Commission's Rules  | ) |                     |

TO: Wireline Competition Bureau

**JOINT PETITION FOR STUDY AREA WAIVER**

**INTRODUCTION**

Pursuant to § 1.3 of the Commission Rules,<sup>1</sup> Hershey Cooperative Telephone Company ("Hershey") and Qwest Corporation ("Qwest") (together, the "Applicants") hereby request that the Federal Communications Commission ("Commission") grant a waiver of the definition of "study area" as contained in the Appendix-Glossary of Part 36 of the Commission Rules. A study area is a geographic section of an incumbent local exchange carrier's service area. Study area boundaries were frozen by the Commission on November 15, 1984, requiring carriers to apply to the Commission for a waiver of the study area boundary freeze before creating new study areas or reconfiguring existing study areas.<sup>2</sup> In determining whether to grant a request to waive the boundary freeze, the

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<sup>1</sup> 47 C.F.R. § 1.3

<sup>2</sup> See 1984 Joint Board Recommended Decision, 49 Fed. Reg. 48325 at para. 66; 1985 Order Adopting Joint Board Recommendation, 50 Fed. Reg. 939 at para. 1.



requesting parties must demonstrate that the change in study area boundaries will not adversely affect the universal service fund, that the state commission having regulatory authority over the study areas does not oppose the boundary change, and that the boundary change is in the public interest.<sup>3</sup>

The Applicants herein submit this request in order to finalize a study area boundary change affecting the Hershey and Qwest exchanges. Attached hereto is a copy of the exchange boundary map showing the modification that the parties seek, as well as a copy of the legal description of the exchange boundary showing that modification.

### **BACKGROUND AND PURPOSE OF WAIVER REQUEST**

Hershey and Qwest are both Nebraska local exchange carriers holding certificates of public convenience and necessity to provide local exchange service in their respective areas. In July 2002, three families building residences in a new housing subdivision, which at the time lacked telecommunications facilities, contacted Qwest, the incumbent local exchange carrier, to inquire about having facilities built out to the housing area. The families were not satisfied with Qwest's quoted construction costs, so they contacted Hershey Cooperative Telephone Company. Hershey, located approximately 4 miles away, was the nearest alternative provider of telecommunications services in that area. After comparing construction estimates from Qwest and Hershey, the families decided that they wanted Hershey to be their telecommunications services provider. Hershey agreed to provide service to the area and Qwest agreed to allow Hershey to build facilities out to the three houses. The families then filed an application before the Nebraska Public Service Commission seeking the authority to change the boundary of the

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<sup>3</sup> See *U.S. WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, AAD 94-27, 10 FCC Rcd 1771, 1772 (1995) (*PTI/Eagle Order*).

Qwest/Hershey exchanges and to allow Hershey to be their local exchange carrier. On August 20, 2002, the Nebraska Public Service Commission granted the application.

### **APPLICATION FOR WAIVER**

Universal Service Fund. In examining whether the universal service fund will be adversely affected by the boundary modifications to the Hershey and Qwest study areas, the Commission and the Applicants must assess whether the study area waiver would result in an annual aggregate shift in high-cost support in an amount equal to or greater than one-percent of the total high-cost fund for the relevant funding year.<sup>4</sup> The Applicants declare that their respective annual high-cost support amounts are substantially less than one-percent of the total high-cost support fund for the pertinent funding year in which the Nebraska Public Service Commission approved the exchange boundary modification.

State Commission Approval. As noted above, the Nebraska Public Service Commission granted approval of the application proposing the boundary change affecting the Hershey and Qwest service areas. Attached hereto is a copy of the Nebraska Public Service Commission's Order granting the boundary change.

Public Interest Benefits. Granting a waiver of the definition of "study area" is in the public interest because Hershey has demonstrated its willingness and commitment to invest in its network in order to serve end-users in areas without existing telecommunications facilities.

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<sup>4</sup> See *PTI/Eagle Order*, 10 FCC Rcd at 1774, paras. 14-17.

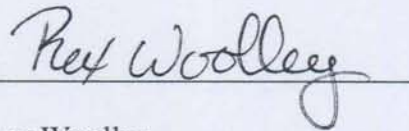


## CONCLUSION

Applicants believe that the Commission's standard for determining whether to grant a waiver of the study area boundary freeze has been satisfied, and for the reasons stated above, respectfully request a waiver of the Commission's study area definition to allow Applicants to modify the study area boundaries, as agreed upon, in order to serve the requesting end-users.

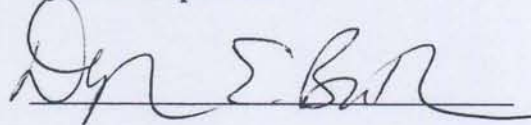
Respectfully submitted,

**Hershey Cooperative Telephone Company**



Rex Woolley  
General Manager  
P.O. Box 235  
Hershey, NE 69143  
(308) 368-5561

**Owest Corporation**



Daphne E. Butler  
Senior Attorney  
Suite 950  
607 14<sup>th</sup> Street, N.W.  
Washington, DC 20005  
(303) 383-6653

Date 11-29-07

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-2766  
of Tim and Leigh Anne Hoatson; )  
Mark and Deb Stickley; and Doug )  
and Danella Campbell, all of )  
Hershey, Nebraska, seeking )  
authority to receive telephone ) GRANTED  
service from the Hershey ex- )  
change of the Hershey Coopera- )  
tive Telephone Company, in what )  
is currently considered Qwest )  
service area. ) Entered: August 20, 2002

BY THE COMMISSION:

On July 7, 2002, an application was filed by Tim and Leigh Anne Hoatson; Mark and Deb Stickley; and Doug and Danella Campbell, all of Hershey, Nebraska, seeking authority to receive telephone service from the Hershey exchange of the Hershey Cooperative Telephone Company (Hershey), in lieu of what is currently considered the service area of Qwest Corporation (Qwest). Notice of the application was published in The Daily Record, Omaha, Nebraska, on July 15, 2002.

O P I N I O N   A N D   F I N D I N G S

Qwest and Hershey are local exchange carriers holding certificates of public convenience and necessity to provide local exchange service in their respective territories. Tim and Leigh Anne Hoatson; Mark and Deb Stickley; and Doug and Danella Campbell all reside within the boundaries of Qwest's North Platte exchange, and are requesting a boundary change so that they may receive local exchange service from Hershey Cooperative's Hershey exchange. Qwest has notified the Commission that they are in agreement with Hershey regarding the proposed boundary change. Qwest does not request reimbursement for existing facilities in this change of boundary.

Changes of a local exchange territory are governed by Neb. Rev. Stat. §§ 75-612 to 75-615. Section 75-612 states that only upon non-consent of all telephone carriers involved shall the Commission hold a public hearing in the application. With no protest filed by any party and with each of the affected local exchange carriers consenting to the boundary change, the Commission processes this application administratively and without a public hearing.



SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-2766

PAGE 2

The Commission finds that, in light of the agreement between all parties involved, the application is in the public interest and should be granted.

O R D E R

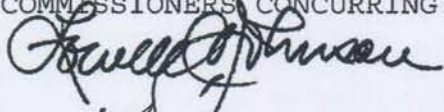
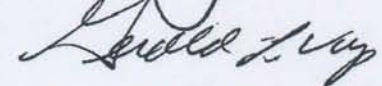
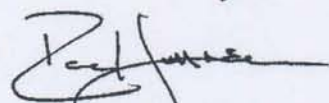
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-2766 be, and it is hereby, granted.

IT IS FURTHER ORDERED that Qwest and Hershey Cooperative Telephone Company submit revised boundary maps to the Commission within 30 days from the date of this order.

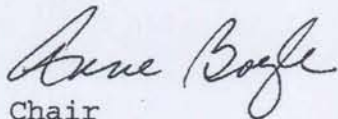
MADE AND ENTERED at Lincoln, Nebraska, this 20th day of August, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

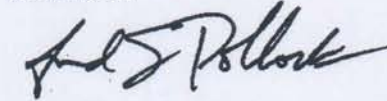
COMMISSIONERS CONCURRING:

//s//Anne C. Boyle  
//s//Frank E. Landis

  
Chair

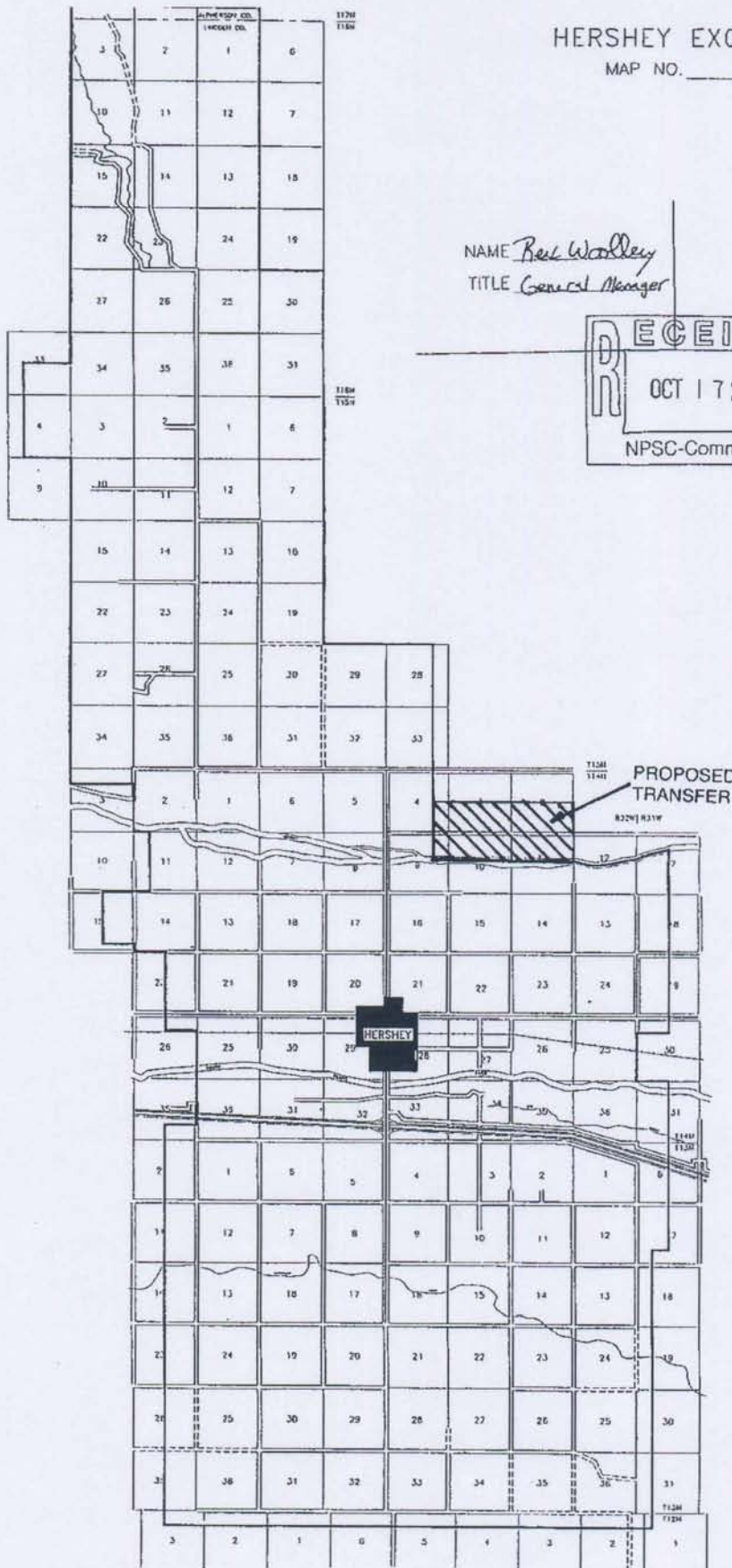
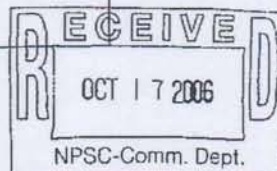
ATTEST:

  
Executive Director

# HERSHEY EXCHANGE

MAP NO. \_\_\_\_\_

NAME *Reel Woolley*  
TITLE *General Manager*



EXCHANGE BOUNDARY

SUBMITTED PURSUANT TO GENERAL ORDER NO.96 N.S.R.C.  
DATED THIS 12<sup>th</sup> DAY OF October 2006

NAME *Reel Woolley*  
TITLE *General Manager*



**LEGAL DESCRIPTION OF THE  
HERSHEY COOPERATIVE TELEPHONE COMPANY-QWEST  
CORPORATION  
STUDY AREA BOUNDARY CHANGE**

S1/2 Section 2, S1/2 Section 3, E1/2SE1/4 Section 4, E1/2NE1/4 Section 9, N1/2 Section 10, and N1/2 Section 11, all in Township 14 North, Range 32 West